Louisiana Law Review

Volume 16 | Number 4
A Symposium on Legislation
June 1956

Dedication of Land to Public Use

Thomas D. Hardeman

certainty the Legislature might well consider the adoption of the federal practice. The probable decrease of reversals on technical grounds would seem ample justification for such legislative action. But, in addition to this end, the aim of rendering justice to the defendant should be considered. Wigmore has said that this "unfortunate departure from the orthodox common law rule . . . has done more than any other one thing to impair the general efficiency of jury trial as an instrument of justice."[47] Another authority has said that a rule such as Louisiana's "tends to debase a trial by jury into a contest of skill between opposing counsel," and that "it deprives the jury of the opinion of the only impartial expert present."[48] Perhaps the most appropriate criticism is one made of the former Illinois practice which, prior to the passage of the Illinois Civil Practice Act,[49] had the same limit on the trial judge that Louisiana has now: "Under our system, verdicts of juries are, in the main, the result of chance and compromise. They are influenced by prejudice and passion. Newspapers have it in their power to increase or decrease the volume of convictions or acquittals. Not infrequently they influence the verdict in a specific case. . . . Only by placing the responsibility upon the judges to supervise the trial properly, advise and guide the jury, can the evils of the present system be minimized."[50]

The logic of the attacks on restricting the trial judge seems sound. The evil of an excessive number of technical reversals is apparent. Some states, recognizing this evil, have adopted the federal rule.[51] Louisiana would do well to follow suit.

Robert J. Jones

Dedication of Land to Public Use

Three methods by which land may be dedicated to public use have been recognized by the courts of this state. These are: (a) statutory dedication, (b) "tacit" dedication, and (c) implied

47. 5 WIGMORE, EVIDENCE 557, § 255 (3d ed. 1940).
48. *Ibid.*
49. ILL. REV. STAT. c. 110, §§ 125-259.72 (Smith-Hurd 1948).
50. Fisher, *The Effect of the Civil Practice Act Upon Instructing Juries in Criminal Cases*, 28 ILL. L. REV. 451, 457 (1933).
51. Illinois, Michigan, South Dakota, Colorado, Maine and Massachusetts have adopted the Federal Rules either by statute or by judicial decision. ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 458 (1947).

dedication. The purpose of this Comment is to analyze the three types of dedication in the light of jurisprudential development.

Statutory Dedication

This mode of dedication is provided for in R.S. 33:5051,[1] which indicates the procedure to be followed when creating a subdivision in a municipality or parish. The statute states that a landowner must file a map with the registrar of conveyances of the parish, describing the lots, streets and alleyways, together with the names and dimensions of each. The owner is also obliged to make a formal dedication of "the streets, alleys and public squares or plats shown on the map to public use."[2] In *Life v. Griffin*[3] the court of appeal held that substantial compliance with the provisions is sufficient to complete the dedication.[4] Likewise, in *Collins v. Zander*[5] it was declared that "the dedica-

1. LA. R.S. 33:5051 (1950): "Whenever the owner of any real estate desires to lay off the same into squares or lots with streets or alleys between the squares or lots with the intention of selling or offering for sale any of the squares or lots, he shall, before selling any square or lot or any portion of same, cause the real estate to be surveyed and platted or subdivided by a licensed surveyor or civil engineer into lots or blocks, or both, each designated by number, and set stakes at all of the corners of every lot and block thereof, properly marked so as to designate the correct number of each lot and block; write the legal description of the land on the plat or map, and cause to be made and filed in the office of the keeper of notarial records of the parish wherein the property is situated and copied into the conveyance record book of such parish, and a duplicate thereof filed with the assessor of the parish a correct map of the real estate so divided, which map shall contain the following:

"(1) The section, township, and range in which such real estate or subdivision thereof lies according to government survey.

"(2) The number of squares by numerals from 1 up, and the dimensions of each square in feet and inches.

"(3) The number of each lot or subdivision of a square and its dimensions in feet and inches.

"(4) The name of each street and alley and its length and width in feet and inches.

"(5) The name or number of each square or plat dedicated to public use.

"(6) A certificate of the parish surveyor or any other licensed surveyor or civil engineer of this state approving said map and stating that the same is in accordance with the provisions of this Section and with the laws and ordinances of the parish in which the property is situated.

"(7) A formal dedication made by the owner or owners of the property or their duty authorized agent of all the streets, alleys and public squares or plats shown on the map to public use."

2. It has been suggested that the language of the statute is broad enough to include a method by which dedication of land for other purposes (such as a cemetery) may be accomplished. See Note, 16 LOUISIANA LAW REVIEW 582 (1956).

3. 197 So. 646 (La. App. 1940).

4. *Accord:* Metairie Park v. Currie, 168 La. 588, 122 So. 859 (1929) (formal dedication requirement not complied with); Sliman v. Village of Palmeto, 145 So. 410 (La. App. 1933) (plat filed in the office of the keeper of notarial records but not copied into the conveyance record book).

5. 61 So.2d 897 (La. App. 1952).

tion becomes complete immediately upon the recordation of the plan or map and substantial compliance with Act 134 of 1896."

Perhaps the leading case on statutory dedication is *Arkansas-Louisiana Gas Co. v. Parker Oil Co.*[6] There it was stated, first, that a dedication in compliance with the statute is complete in itself and does not require an acceptance, and, second, that by this method of dedication the public authority acquires not a servitude, but complete ownership of the designated property. These principles are reiterated in subsequent decisions and seem to be well settled.[7]

"Tacit" Dedication

Originally, R.S. 48:491[8] provided a method by which a *parish* could acquire a right in a *road.* As amended by act 639 of 1954, the statute provides that "all roads and *streets* . . . which have been or are hereafter kept up, maintained or worked for three years by authority of any parish governing authority . . . or by authority of any *municipal* governing authority . . . shall be public roads or streets as the case may be."[9] (Emphasis added.) Under this statute the "working and maintaining" must be serious[10] and must be done without coercion of the landowner.[11] On the other hand, an intention to dedicate is not necessary;[12] it is sufficient that the parish or municipal governing authority has worked the road or street for the required period without protest by the landowner.[13]

6. 190 La. 957, 183 So. 229 (1938).

7. B. F. Trappey's Sons v. City of New Iberia, 225 La. 466, 73 So.2d 423 (1954) (dictum); Emery v. Orleans Levee Board, 207 La. 386, 21 So.2d 418 (1945) (dictum); Collins v. Zander, 61 So.2d 897 (La. App. 1952); Brasseaux v. Ducote, 6 So.2d 769 (La. App. 1942) (dictum); Life v. Griffith, 197 So. 646 (La. App. 1940) (dictum).

8. LA. R.S. 48:491 (1950): "All roads or streets in this state that are opened, laid out or appointed by virtue of any act of the legislature or by virtue of an order of any parish governing authority in any parish, or any municipal governing authority in any municipality, or which have been or are hereafter kept up, maintained or worked for a period of three years by authority of any parish governing authority in its parish or by authority of any municipal governing authority in its municipality shall be public roads or streets as the case may be. Also all roads or streets made on the front of their respective tracts of lands by individuals when the lands have their front on any of the rivers or bayous within this state shall be public roads when located outside of municipalities and shall be public streets when located inside of municipalities."

9. Part of the original act, providing for an arbitrary measure of compensation for deprivation of the land, was declared unconstitutional in Gibbon v. Parish of St. Mary, 140 La. 854, 74 So. 172 (1916).

10. Bordelon v. Heard, 33 So.2d 88 (La. App. 1947).

11. Elliot v. Evangeline Parish, 132 So. 368 (La. App. 1931).

12. Porter v. Hickabay, 50 So.2d 684 (La. App. 1951).

13. Fontenot v. Veillon, 72 So.2d 587 (La. App. 1954). The court of appeal

A recent case involving "tacit" dedication is *Wharton v. City of Alexandria*[14] where the plaintiff opposed the paving of a street on the ground that it had never been dedicated. It was conceded that no formal dedication had taken place, but the street had been in public use for twenty-five years and had been worked and maintained by the police jury of the parish for a period in excess of three years. In applying the statute the court said: "[T]he courts of this state have interpreted the law to mean just what it says and have held that a road is tacitly dedicated as such when it has been maintained as a public road by the police jury and worked from time to time by road gangs under the authority of the police jury for three years."[15] Nevertheless, it has been consistently held that the statute does not provide a method by which police juries or municipalities may obtain ownership of the land needed for public road or street purposes, but that it only provides a means of acquiring a servitude of passage.[16]

Implied Dedication

Implied dedication, the most commonly recognized method, has been acknowledged by the courts as another way of dedicating land of various descriptions to public uses. This method is more often applicable to roads and streets, but it has also been applied to parks,[17] squares,[18] cemeteries,[19] sidewalks,[20] and an "open space."[21] Its fundamental basis was well expressed in an early United States Supreme Court case, *Cincinnati v. White*,[22] by the statement: "[T]here is no particular form necessary to a dedication of land to public use. All that is required is the assent of the owner of the land, and the fact of its being used for the purposes intended."[23] Although there are earlier Lou-

held that certain roads were public notwithstanding the fact that the police jury had no written right of way and had never adopted a resolution declaring the roads to be public.

14. 77 So.2d 1 (La. App. 1954).

15. *Id.* at 2.

16. Paret v. Louisiana Highway Commission, 178 La. 454, 151 So. 768 (1933); Fuselier v. Iberia, 109 La. 551, 33 So. 597 (1903); Bradley v. Pharr, 45 La. Ann. 426, 12 So. 618, 19 L.R.A. 647 (1893).

17. Town of Vinton v. Lyons, 131 La. 673, 60 So. 54 (1912); Town of Kenner v. Zito, 13 Orl. App. 465 (La. App. 1916).

18. New Orleans v. Carrollton Land Co., 131 La. 1092, 60 So. 695 (1913).

19. Locke v. Lester, 78 So.2d 14 (La. App. 1955).

20. Collins v. Zander, 61 So.2d 897 (La. App. 1952).

21. Shreveport v. Walpole, 22 La. Ann. 526 (1870); Pickett v. Brown, 18 La. Ann. 560 (1866).

22. 31 U.S. (6 Pet.) 431 (1832).

23. *Id.* at 431.

isiana decisions reaching the same result, this decision has been the authority most cited by the courts of this state in deciding cases of implied dedication. The two requirements of the quoted passage have been assimilated to an offer and an acceptance, the assent of the landowner constituting an offer, and the mere use by the public constituting an acceptance.[24] While neither of these requirements need be formally expressed, it must be unequivocally shown that both are met.[25]

Application of the doctrine usually occurs where there has been a map of a subdivision or town prepared and lots then sold with reference to the map. A typical illustration of how such dedication comes about can be found in the cases dealing with the Town of Carrollton that later became a part of the City of New Orleans by act 71 of 1874. The founders of the town had a plan of the old McCarthy plantation made, dividing it into squares of portions of land, numbered and bounded by streets and avenues. Many lots and parts of lots were sold by the owners and their vendors by reference to the map. In one of the cases the court found the streets and avenues shown on the map to be public.[26] In a later case a square, designated on the plan as "Frederick Square," was also declared public.[27] As the bases for its holdings the court found first an intention on the part of the landowners to make the property public and second an actual use by the people of New Orleans. A similar dedication was found to have existed in the minds of the original planners of the City of Shreveport.[28] On the original map of that city, a plot of ground was shown that has been referred to by the courts as the "open space." This space, which bordered on the river, was held to be dedicated because it was "intended by the founders to be a dedication for public uses, made on a large and liberal scale, commensurate with their views of the future importance and large commerce of their newly estab-

24. Collins v. Zander, 61 So.2d 897 (La. App. 1952); Robinson, *Dedication of Streets and Alleyways in Louisiana*, 25 TUL. L. REV. 88 (1950).

25. Arkansas-Louisiana Gas Co. v. Parker Oil Co., 190 La. 957, 183 So. 229 (1938); Landry v. Gulf States Utilities Co., 166 La. 1609, 118 So. 142 (1928); Bomar v. Baton Rouge, 162 La. 342, 110 So. 497 (1926); Saulet v. New Orleans, 10 La. Ann. 81 (1855). In a situation involving a sale of lots with reference to a map showing the land in question, the acceptance is found in the purchase by the public. Town of Vinton v. Lyons, 131 La. 673, 60 So. 54 (1912); Flournoy v. Beard, 116 La. 224, 40 So. 684 (1906); Shreveport v. Walpole, 22 La. Ann. 526 (1870).

26. 9 La. Ann. 244 (1854).

27. 131 La. 1092, 60 So. 695 (1913).

28. Shreveport v. Walpole, 22 La. Ann. 526 (1870); Pickett v. Brown, 18 La. Ann. 560 (1866).

lished town."[29] A recent case in which an intention to dedicate was found is *Locke v. Lester*.[30] There no map was involved, but a dedication of a graveyard was found. As its reason the court stated: "[T]he graveyard has been continuously used for more than half a century, and subsequent to 1941 its grounds have been carefully tended. Burial is, and always has been open to the general public. There are no restrictions or conditions imposed upon the right to be buried in this cemetery, nor is there any regulatory authority. Maintenance is achieved through voluntary efforts of those who have relatives interred there."[31]

An intention to dedicate must be demonstrated so as to exclude any other rational hypothesis,[32] for in several cases a lack of intention to dedicate has been found.[33] In *New Orleans v. Heirs of Guillote*[34] sales were made with reference to a map which contained a plot of ground with an inscription describing the plot as a market. The court, in rejecting the plaintiff's contention that the land had been dedicated to public use, stated that a market is not necessarily public property, but may be the object of individual ownership. Likewise, in *Livaudais and David v. Municipality No. Two*[35] it was declared that churches are usually considered private property, and their appearance on certain blocks of a map referred to in the sale of lots did not constitute a dedication of the blocks.

In addition to a finding of intention to dedicate, implied dedication has sometimes been based on estoppel *in pais*.[36] In the cases where such a conclusion was reached, the land in question had been used with the assent of the owner for public pur-

29. Shreveport v. Walpole, 22 La. Ann. 526, 529 (1870).

30. 78 So.2d 14 (La. App. 1955).

31. *Id.* at 15.

32. Donaldson's Heirs v. New Orleans, 166 La. 1059, 118 So. 134 (1928); Bomar v. Baton Rouge, 162 La. 342, 110 So. 497 (1926); Torres v. Falgoust, 37 La. Ann. 497 (1885); Kemp v. Town of Independence, 156 So. 56 (La. App. 1934). No one is presumed to give his land away, and the burden of proving a divestiture is upon him who alleges it. Torres v. Falgoust, 37 La. Ann. 497 (1885).

33. Heirs of Joun David v. New Orleans, 16 La. Ann. 404 (1862) (dots on a plat did not show intention); Saulet v. New Orleans, 10 La. Ann. 81 (1855) (square colored yellow on a green map showed no intention to dedicate).

34. 14 La. Ann. 875 (1859).

35. 5 La. Ann. 8 (1850).

36. Ford v. Shreveport, 204 La. 618, 16 So.2d 127 (1943); Torres v. Falgoust, 37 La. Ann. 497 (1855); Saulet v. New Orleans, 10 La. Ann. 81 (1855). See also BLACK, LAW DICTIONARY (4th ed. 1951): "An estoppel in pais arises whenever one, by his conduct, affirmative or negative, intentionally or through culpable negligence induces another to believe and have confidence in certain material facts, and the latter, having the right to do so relies and acts thereon, and is, as a reasonable and inevitable consequence, misled to his injury."

poses in such a manner as to exclude the idea of private ownership, and for such a length of time that the public accommodation and the rights of individuals would be seriously affected by the interruption of the use.[37] Thus, in the early case of *Town of Vinton v. Lyons*[38] lots were sold with reference to a map showing a park which was the subject of litigation. In finding an estoppel *in pais*, the court said that setting aside the block as a park "had the effect of increasing the value and desirability of the other lots . . . . The law considers, under such circumstances, that the value of the land dedicated goes into the remaining property and is received by the owner in making sales at an increased price."[39] In a more recent case, *Ford v. Shreveport*,[40] an estoppel was found where there was no reference to a plat. There a landowner was regarded as consenting to an appropriation of a street because he sat idly by while the city paved and the public used a strip for street purposes. Under such circumstances, he was precluded from reclaiming the property. It should be noted, however, that mere use without more will not constitute a dedication to the public.[41]

Many of the cases dealing with implied dedication have not decided what interest the public acquires in the land. Of the cases in which the determination has been made, a majority hold that the dedicated land became a public thing, the ownership of which, under Civil Code article 435, is vested in the public generally. In *Saulet v. New Orleans*[42] the court noted that the Civil Code of 1825, in article 449 (now article 558), provided for two types of common property. The first type may be used by everyone, whereas the second type, though common property, is not subject to common use, but may be employed for the advantage of the public by the city or parochial authorities. With reference to the latter type, the public interest must be derived in some one of the modes recognized and sanctioned by law. With reference to the first type, however, the rules which prevail in private grants have been dispensed with,[43] and the

37. Torres v. Falgoust, 37 La. Ann. 497 (1855).
38. 131 La. 673, 60 So. 54 (1912).
39. *Id.* at 678, 60 So. at 55.
40. 204 La. 518, 16 So.2d 127 (1943).
41. Bomar v. Baton Rouge, 162 La. 342, 110 So. 497 (1926).
42. 10 La. Ann. 81 (1855).
43. Visible signs of dedication and open use take the place of title and registry. Anderson v. Thomas, 166 La. 512, 117 So. 573 (1928); Faunce v. New Orleans, 148 So. 57 (La. App. 1933).

"broad principles of equity" have permitted a dedication to public use based on intention or estoppel.[44]

Some of the consequences of the view expressed in a majority of the cases are found in holdings that the land is not subject to prescription after being dedicated,[45] that neither the land nor the rentals from such land are subject to seizure,[46] that no possessory action may be brought by one possessing dedicated property adverse to the public's claim,[47] and that the property is inalienable by the city or parish.[48] These results stem from Civil Code article 482[49] which provides that "[T]here are things . . . which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership." It further provides that such things may regain the "quality" as soon as they cease to be applied to the public purpose. The last provision of the article was construed in *McNeil v. Hicks*.[50] It was there held that whenever the public interests may require it, the municipal or parochial authorities may alienate public places, but only with the consent of and by the authority of the sovereign. Hence, under the view of a majority of the cases, in order for dedicated land to regain the quality of being susceptible to private ownership, the State Legislature must consent to its alienation. At first blush, this proposition seems to have been ignored by the court in *Tilton v. New Orleans Ry.*,[51] where it was held that the city had the power to sell a right of way to the defendant rail-

44. Saulet v. New Orleans, 10 La. Ann. 81 (1855).

45. Kemp v. Town of Independence, 156 So. 56 (La. App. 1934); Faunce v. New Orleans, 148 So. 57 (La. App. 1933).

46. Kline v. Parish of Ascension, 33 La. Ann. 562 (1881). "Property dedicated to public use cannot be the subject of private ownership. It is out of commerce and not liable to seizure . . . . [A]nd the revenues derived from such property itself, are destined for public use, and are likewise not liable to seizure."

47. Keefe v. City of Monroe, 120 So. 102 (La. App. 1929). "Mere physical possession of public places which are not subject to private ownership is not such possession as entitles the possessor to maintain himself against the public."

48. New Orleans v. Carrollton Land Co., 131 La. 1902, 60 So. 695 (1913); Kline v. Parish of Ascension, 33 La. Ann. 562 (1881); Shreveport v. Walpole, 22 La. Ann. 526 (1870); Burthe v. Black and Town of Carrollton, 9 La. Ann. 244 (1854).

49. LA. CIVIL CODE art. 482 (1870): "Among those which are not susceptible of ownership, there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use.

"There are things, on the contrary, which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership; but which resume this quality as soon as they cease to be applied to that purpose; such as the high roads, streets and public places."

50. 34 La. Ann. 1090 (1822).

51. 35 La. Ann. 1062 (1883).

way company. It should be noted, however, that the courts have consistently held that "the conveyance of a right of way is to be regarded as a mere servitude and not as a transfer of fee simple title of the land unless the deed itself evidences that the parties intended otherwise."[52] Applying this principle to the *Tilton* case, it is evident that the court was correct in concluding that the city acted properly in transferring the right of way. Although the city could not alienate the land, it could administer it to the best advantage of the public.[53]

In opposition to the above view, some cases have held that implied dedication grants only a servitude to the public in the dedicated land.[54] Authority for this view, which seems to be applicable only to roads and streets, is found in the section of the Civil Code pertaining to the servitude of way.[55] There is a clear implication in that section that all roads, public and private, constitute servitudes of passage. Furthermore, the court in the *Arkansas-Louisiana Gas Co. v. Parker Oil Co.* case,[56] which dealt specifically with statutory dedication of a street holding that such a dedication gives rise to ownership, declared that implied dedication confers only a servitude. Since that decision in 1938 the idea that the public acquires only a servitude has been prevalent in cases dealing with roads and streets,[57] while the notion that the public acquires ownership seems to remain applicable in cases dealing with lands of other descriptions.[58] Although the dictum of the *Parker* case may be questioned in that it was based largely upon decisions of other states, there is authority in the Civil Code, as stated above, for such a view.

---

52. Texas & Pac. Ry. v. Ellerbe, 199 La. 489, 6 So.2d 556 (1942). See also Bond v. Texas & P.R.R., 181 La. 763, 160 So. 406 (1935); Knox v. Louisiana Ry. & Nav. Co., 157 La. 602, 102 So. 685 (1925); Leader Realty Co. v. Taylor, 147 La. 256, 84 So. 648 (1920).

53. New Orleans v. Carrollton Land Co., 131 La. 1092, 60 So. 695 (1913); Kline v. Parish of Ascension, 33 La. Ann. 562 (1881); Kemp v. Independence, 156 So. 56 (La. App. 1934).

54. James v. Delery, 211 La. 306, 29 So.2d 858 (1947); Arkansas-Louisiana Gas Co. v. Parker Oil Co., 190 La. 957, 183 So. 229 (1938); Collins v. Zander, 61 So.2d 897 (La. App. 1952); Brasseaux v. Ducote, 2 So.2d 769 (La. App. 1942); Life v. Griffith, 197 So. 646 (La. App. 1940).

55. LA. CIVIL CODE tit. IV, c. 3, § 5 (1870).

56. 190 La. 957, 183 So. 229 (1938).

57. B. F. Trappey's Sons v. City of New Iberia, 225 La. 466, 73 So.2d 423 (1954); James v. Delery, 211 La. 306, 29 So.2d 858 (1947); Brasseaux v. Ducote, 2 So.2d 769 (La. App. 1942); Life v. Griffith, 197 So. 646 (La. App. 1940) (dictum). *Contra*: Ford v. Shreveport, 204 La. 618, 16 So.2d 127 (1943); Richard v. New Orleans, 195 La. 898, 197 So. 594 (1940).

58. Locke v. Lester, 78 So.2d 14 (La. App. 1955).

A third view concerning the interest the public acquires, which is expressed in very few cases, is that by implied dedication the city or parish and not the public acquires full ownership of the land. For example, in *Richard v. New Orleans*[59] a jactitory action in which the ownership of a street was contested, the court held that the sale of lots with reference to a plat showing the street in question amounted to a dedication vesting ownership in the city. This 1940 decision seems to vary from the pattern of the previous cases.

Conclusion

With reference to statutory and "tacit" dedication, the law seems to be well settled. Substantial compliance with R.S. 33:5051 vests ownership of dedicated lands in the public governing body, and maintenance of a road or a street for three years by parochial or municipal authorities, under R.S. 48:491, vests a servitude in the public. Also, in the light of the many cases which may serve as a guide, the courts should have no trouble in determining the applicability *vel non* of the doctrine of "implied" dedication. The only problem seems to lie in ascertaining in whom the ownership rests after the latter type of dedication has been found. It has been suggested that the seemingly inconsistent cases dealing with roads and streets can be reconciled by distinguishing between city streets and country roads, in that ownership of streets is (or should be) in the public, while ownership of roads remains in individuals.[60] Although there is no clear statement in the cases supporting such a proposition, it might be extended into the entire field of dedication and provide a basis for remedial legislation.

Thomas D. Hardeman

59. 195 La. 898, 197 So. 594 (1940), discussed in *Work of Louisiana Supreme Court for 1939-1940 Term—Public Law*, 3 LOUISIANA LAW REVIEW 320, 331 (1941). See also Ford v. Shreveport, 204 La. 618, 16 So.2d 127 (1943).

60. See Comment, 13 TUL. L. REV. 606 (1939).